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R.I.No. 10778
14-10-42.

Submitted.

Attention is invited to the letters from Mr. R.H. Bhalunkar at pp. 1-2 ante. Recently the Bombay High Court has held in Keshav Krishna Dhopade VS Bhagwan Sambhu Chaudhari, 44 Bom. L.R. 138 that under sect. 29 of the Indian Limitation Act, 1908, the benefit of sect 20 there f cannot be availed of by a penintiff in a suit falling under section 3(W) of the Dekkan Agriculturists Relief Act, 1879. The applicant considers that this ruling does not lay down correct law and requests that an Act may be promulgated by H.E. the Governor declaring that the Indian L mitation Act governed and should be deemd to have governed cases covered by section 72 of the D.A.R. Act except for the different periods of Limitation prescribed. His main contention is that section 72 of the D.A.R. Act uses the word "substituted" and therefore it cannot be said to prescribe a peridd of limitation within the meaning of sect, 29) of the Imitation Act, 1908. The petition is sent to ~~them~~ this Deptt. for remarks.

It seems that the applicant's contention has no substance Sect. 72 of the D.A. R.Act, 1879 provides that in any suit of the description mentioned in cl.(w) of sect. 3 for the recovery of money from a person who at the time when the cause of action arose was an agriculturist the periods of limitation mentimed shall be deemed to be substituted tfor those prescribed in the Limitation Act. Sub-Section (2) of sect.29 of the Limitation Act provides inter alia that where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period therefore by the first schedule, the provisins of sect. 3 shall apply as if such period were prescribed therefore in that schedule The applicant contends that because sect. 72 of the D.A.R.Act merely substitues different periods (e.g. 6 years instead of 3 years it can not be said to prescribe a

different period. This does not appear to be correct as the result of the substitution is the prescribing of a different period by that special or local law. The word "prescribe" ordinarily means "lay down"(of Oxford Dictionary) and it can as well be contended that the D.A. R. Act lays down a special period of limitation.

3 Under sub-section 2(a) of section 29 of the Limitation Act, the provisions of sections 4,9, to 18 and 22 shall apply only in so far as they are not expressly excluded by such special or local law and under sub-section 2(b) the remaining provisions of the Limitation shall not apply unless they are expressly made applicable by the D.A.R.Act (of Mitra's Limitation, Act, 12th Edn.p.339; also Chitlay and Rao's Limitation, p.918, note 5). Thus the view expressed by Divatia J is, it is respectfully submitted, correct and there is no need to pass a law as prayed for.

Sd./ D. (W)D. 17/X

S.S. The contention of the applicant that section 72 of the Deccan Agriculturists Relief Act, 1879 merely substitutes different periods of limitation for those inthe second schedule to the Indian Limitation Act is not correct. Even the wording of section 72 is that the following perods of limitation shall be deemed to be substituted for those prescribed in the second column of the second Schedule to theIndian Limitation Act, 1877, That is to say it prescribes substituted perods limitation for those prescribed by the Limitation Act. There is no point in saying that section 72 merely substitutes different periods in the second schedule to the Limitation Act, 1908 in certain cases

Id./ SUR

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Section 29(2)(b)of the Indian Limitation Act, 1908 expressly provides thatthe provisions contained in the Act other than sections 4,9to 18 and 22 shall not apply where any special or local law prescribes for any suit etc. a period of limitation different from that prescribed therefor by the first schedule for the purpose of determining the period of limitation. In the case of the plain provisions contained in this section, a party is not entitled to the benefit of section 20 in the case of a suit falling under section 72 of the Deccan Agriculturists Relief Act. under the law as it stands therefore the High Court has rightly held that section 20 does not apply in the case of a suit under the special period of limitation provided for under the Deccan Agriculturists Relief Act.

2 The question however that arises from the present application is whether or not section 20 and the other sections, namely, sections 6 to 8 and sections 19 and 21 should be made applicable to such suits. The judgment indicates that the absence of the applicability of sections like 6,7 and 8 is a great hardship on plaintiffs. Attention is in this connection invited to para 1 note on clause 3, of the Report of the Select Committe to which the Bill which became Act X of 1922 was recommitted, at page 74 of Gazette of India, Part V of 1922. The select Committee carefully considered each section in Parts II and III of the Act and provided that sections 4,9 to 18 and 22 should apply to periods of limitation prescribed by special or local laws, unless expressly excluded thereby and that the remaining provisions of the Act should not apply. The Select Committee also noted out that this did not preclude the amendments of special or local laws with a view to the application of such provisions. Whether or not, section 20 and the other sections referred to should be made applicable to such suits as has been done by section 185 of the Bengal Tenancy Act, 1885, is for the administrative department to decide.

3d/ H.H.M. 29/10

Secretary to Govern[illegible]ent,
Legal [illegible]rtment.

U.O. to H.D. No. 6308 dated the 30th October 1942